

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of the Commission's Space Station)	IB Docket No. 02-34
Rules and Policies)	
)	
Mitigation of Orbital Debris)	IB Docket No. 02-248

To: The Commission

COMMENTS OF ICO GLOBAL COMMUNICATIONS (HOLDINGS) LIMITED

ICO Global Communications (Holdings) Limited ("ICO") submits these comments in response to the petitions for reconsideration of the Commission's *Order* filed in the above-captioned proceeding.¹ In its petition for reconsideration of the *Order*, ICO requested review of the Commission's spectrum cap rule for non-geostationary satellite orbit ("NGSO") and NGSO-like licensees, and clarification that the rule, if retained, will not apply to spectrum acquired through license assignment or transfer of control.² ICO notes that at least one other party, the Satellite Industry Association ("SIA"), seeks reconsideration or clarification of ambiguities in the *Order* with respect to requests for assignment or transfer of control of a satellite license.³ Both ICO's and SIA's petitions warrant further Commission consideration of the application or applicability of the rules adopted in the *Order* to license assignments and transfers of control.

In connection with its reconsideration or clarification of the related assignment and transfer of control issues raised in ICO's and SIA's petitions, the Commission should address

¹ *Amendment of the Commission's Space Station Licensing Rules and Policies*, 18 FCC Rcd 10760 (2003) ("Order").

² See ICO Petition for Reconsideration, *Amendment of the Commission's Space Station Licensing Rules and Policies*, Docket No. 02-34, at 11-12 (Sept. 26, 2003).

³ See SIA Petition for Reconsideration and Clarification and Comments, *Amendment of the Commission's Space Station Licensing Rules and Policies*, Docket No. 02-34, at 2-5 (Sept. 26, 2003).

more fully the application of milestone requirements in the context of license assignments and transfers of control. Specifically, the Commission should clarify that satellite licensees that acquire additional spectrum from other licensees should be permitted to implement a single integrated system under a single milestone schedule, and should not be required to implement multiple systems under separate milestone schedules and separate construction contracts. This clarification is fully consistent with Commission policy and precedent.

Greater reliance upon market forces was a key policy consideration in the Commission's effort to reform the satellite licensing process.⁴ The Commission expressly intended to avoid the "need to rely on a lengthy and complicated rulemaking proceeding, or regulatory fiat, to determine the proper amount of spectrum to give to each applicant."⁵ If the *Order* were to require licensees to implement a separate system for each additional license acquired, however, it would replace the licensee's best commercial and technical as to the optimal amount of spectrum required for a given system with regulatory fiat. Such an outcome would subvert the very policies that the Commission intended to promote when it eliminated the satellite anti-trafficking rule.⁶

Consistent with the Commission's policy of encouraging efficient marketplace transactions, the Commission has permitted satellite licensees to acquire additional spectrum from other licensees to implement a single system and to obtain milestone credit for the construction efforts made under the commonly controlled licenses. Notably, the Commission has found that a satellite construction contract is sufficient for milestone purposes if executed by the licensee or an affiliate "wholly owned or controlled by the licensee."⁷ The Commission has

⁴ See, e.g. *Order* ¶ 218 (eliminating the satellite anti-trafficking rule in order to "allow parties flexibility to transfer satellite bandwidth to more efficient uses in response to changing market conditions and consumer demands, and...allow marketplace forces to determine which companies succeed.")

⁵ *Id.* ¶ 33.

⁶ *Id.*

⁷ See *TMI Communications and Company, Limited Partnership*, 18 FCC Rcd 1725, 1729 ¶ 10.

ruled that a licensee and its commonly owned or controlled affiliate “have such commonality of interests that, in the absence of specific facts to the contrary, we may reasonably view their interests as interchangeable.”⁸

Expanding upon this rationale, the Commission recently allowed two commonly owned satellite licensees to implement a single system and to comply with the satellite construction or contract milestone based on the construction efforts of one of those licensees. In the *KaStarCom Order*, the Commission found that KaStarCom. World Satellite LLC (“KaStarCom”), a fixed satellite service (“FSS”) licensee in the Ka-band, satisfied the first milestone requiring commencement of construction of its satellite.⁹ At the time of its first milestone deadline in November 2002, KaStarCom was neither a party to nor affiliated with a party to any satellite manufacturing contract. Subsequently, however, Wildblue Communications, Inc. (“WB”), the parent company of another Ka-band licensee, WB Holdings, acquired control of KaStarCom pursuant to Commission consent.¹⁰

Prior to the Commission action to grant transfer of control of KaStarCom to Wildblue Communications, WB had executed a satellite manufacturing contract with Space Systems/Loral, Inc. for the construction of WB Holdings’ licensed system.¹¹ Despite KaStarCom’s failure to execute a manufacturing contract by the time of its first milestone deadline, the Commission found that WB’s manufacturing contract satisfied KaStarCom’s first milestone requirement by virtue of WB’s and KaStarCom’s common ownership.¹² In doing so, the Commission effectively allowed WB to aggregate spectrum freely without any requirement to proceed under separate construction contracts and milestone schedules.

⁸ *Id.*

⁹ See *KaStarCom. World Satellite, LLC*, Memorandum Opinion & Order, File Nos. 102-SAT-P/LA-98 *et al.*, DA 03-3428 (IB Oct. 27, 2003) (“*KaStarCom Order*”).

¹⁰ *Id.* ¶ 1 n.1.

¹¹ *Id.* ¶ 3.

¹² *Id.* ¶ 6 n.16.

Thus, long-standing Commission policy and precedent, as well as the underlying rationale for the Commission's elimination of the satellite anti-trafficking rule, dictate that MSS licensees should have the flexibility to acquire or merge with another MSS licensee and use the aggregated spectrum to provide service through a single satellite system. As ICO points out in its reconsideration petition, however, the *Order* is ambiguous as to whether assignment and transfer of control transactions will be permitted under certain circumstances, notwithstanding its clear policy pronouncements encouraging the unhindered operation of secondary markets.

To avoid any regulatory uncertainty that would interfere with efficient marketplace transactions, ICO asks the Commission to clarify that satellite licensees that acquire additional spectrum from other licensees can implement a single integrated system under a single milestone schedule, and are not required to implement multiple systems under separate milestone schedules and separate construction contracts. ICO further urges the Commission to grant its reconsideration petition and, in particular, reconsider the assignment and transfer of control issues raised in this proceeding.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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